HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case.

W.P. No. 1444 (S/S)/2001

Harpal Singh and others

Vs.

State of U.P. and others.

Date of decision :-15.5.2004.

Approved for reporting.

~~Not approved for reporting~~

Initials of Judge

HIGH COURT OF UTARANCHAL AT NAINITAL

Writ Petition No. 1444 (S/S) of 2001
(Old No. 33859 of 2000)

(1) Harpal Singh
S/o Sh. Shobha Ram, (Mate).
(2) Shyam Babu
S/o Sri Goda Lal, (Mate)
(3) Mubark
S/o Mahmood Shah, (Beldar)
All working in the office of Executive Engineer, Provincial Division, Public Works Department, Nainital. ……..Petitioners

Vs

State of U.P. and others. …….Respondents

Counsel for the petitioner Sh. M.C. Kandpal
Counsel for the respondent Sh. J.P. Joshi

Dated:- 15-5-2004

Hon'ble Rajesh Tandon J.

Heard Sh. M.C. Kandpal learned counsel for the petitioner and Sh. J.P. Joshi learned counsel for the respondent.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the impugned order dt. 10-4-2000 and 20-21-2000 passed by respondents No. 3 and 4 (Annexure 7-10). The petitioner have further prayed for the issue of ad interim mandamus directing the respondents to permit the petitioners to work as usual work on the posts held by them and pay them their salary regularly.

According to the case of the petitioner they are working as Mate and Beldar. Petitioner's no.s 1 and 2 are working as Mate and Petitioner No. 3 is working as Beldar in the office of respondents No.5. Their work and conduct has been excellent. They are working since 1989 and 1986 respectively.

Counsel for the petitioners have submitted that they were working as Beldar prior to 1991 in the work charged establishment of the department in the provincial division PWD, Nainital.

Counsel for the petitioners have referred the G.O dated 15th October 1997 that the employees continuously working prior to 29-6-1991 as the daily wagers in the Govt. department are liable to be regularized in the Govt. department.

Counsel for the petitioners have stated that the Chief Engineer has issued a letter on 3rd July 1999 and on that basis the Chief Engineer PWD (Parvatiya Kahetra) Almora has further issued a letter dated 28th July 1999 for regularization of work charge employees in the regular establishment.

Counsel for the petitioner have further stated that in pursuance of the order dated 28-7-1999, as stated above, passed by the respondent no.3, the petitioners no. 1 to 3 were regularized on 31.3.1997.

As well appear from order of regularization, that while regularizing the petitioners, the authority concerned has considered the G.O. Dt. 15-10-1997 the same is quoted below:-

> Þ,rn}kjk Jh ';ke ckcq iq= Jh xank yky dk tk fd bl [k.M esa cuh vfUre tuinh; T;"Brk lwph i=kd 514@96 th0b0 fnukd 5-6-97 dq tuin T;"Brk lwph dsekd 76 esa fuekZ.k [k.M yk0fu0fo0

jkeuxj e eV d in ij dk;jr g gk orueku 2610&60&

3150&65&3540 e 'kklukn'k l[;k 6399@23-7-99&55 AlkA 98 fnukd 15-10-97 ,o blh ifji{; e e[; vfHk;Urk A io rh; leUo;A yk0fu0fo0] vYekMk dek; iHkkx d i=kd 2819@29 MCy 0 lh0&dek;@ 99 fnukd 28-7-99 d vulkj fnukd 1-8-99 l fu;fer vf/k"Bku e fu;Dr fd; tku d vkn'k ikfjr fd; tkr g] rFkk bUg og lc egxkb HkRrk o vU; HkRr inku fd; tk;x tk fd jkT; ljdkj d vU; fu;fer ljdkjh lodk dk vueU; gAß

The petitioners have submitted that without giving any opportunity, the respondent no. 3 has passed the order dated 10th April, 2000 reverting the petitioners from the regular establishment to the work charge establishment and on the basis of the order passed by the respondent no. 3, the order was issued on 21-4-2000 by the Executive Engineer, Provincial Division, PWD Nainital the same is quoted below:-

Þie[k vfHk;Urk]yk0fu0fo0 y[kuÅ d i=kd 10900;x @110;x@99 fnukd 3-7-99 }kjk dk;jr rFkk 'k"k fu;fefrdj.k d lEcU/k e tkjh fun'kk d vulkj {k=h; e[; vfHk;Urk A io0 le0 A dek; {k= yk0fu0fo0 vYekMk l fu;fer dk; iHkkfjr vf/k"Bku lox gr i=kkd 2819@29 MCy 0lh0 dek; @ 99 fnukd 28-7-99 }kjk ikUrh; A ukMy A][k.M] yk0fu0fo0] uuhrky dk vko';drkulkj fofHkUu J.kh d in ij bl 'kr d v/khu in vkofVr fd; x; Fk fd Hkfo"; e ;fn dkb fun'k@vkfn tkjh fd; tkr g rk mDr i=kd }kjk vkofVr ink dk fujLr le>k tk;xk rFkk ftl ij fu;fer fd; x; depkjh dk dkb Dyme ekU; ugh gkxkA

vr% idj.k ij orieku e i.k :i l fLFkfr gk tku d mijkUr e[; vfHk;Urk A io rh; leUo; A yk0fu0fo0 A dek; iHkkx A vYekMk u viu i=kd &3565@29 &MCy lh 0 &dek;@ 99 fnukd 10-4-2000 }kjk

iO;k dh i=kad 2819@29MC&y 0lh0 dsek;h @99 fnukad 21-7-99 e n’kk;h x;h vkofVr inksa dk fujLr dj iq% l’kkf/kr l[;k e bl tuin dk fofHkUu Jf.k;ksa e in vkofVr fd;h x;h gA vr% e[; vfHk;Urk dsek;h J= yk0fu0fo0]vYekMk d mDr i=kad e fufgr fun’kksa d vuqikyu e iO;k l tkjh fd;h x;h v/kkgLrk{kjdrk d dk;Zy; vkn’k l[;k &2360@ 16 th-bl fnukd 7-8-99)kjk Jh gjiky flag] eV i= Jh ‘kkHkk jke d fu;fefrdj.k d vkn’k ,rn)kjk fujLr fd;h tkrh gA

mDr vkn’k e mfYyf[kr ‘krZ l[;k pkj d v/khu fu;fefrdj.k d vkn’k fujLr djrh gq;h mUgs mud iO;k d ekfyd vf/k”Bku vfu;fer dk;Zikfjr e iR;kofrZr fd;k tkrk gS rFkk mDr delpkjh d foRr gLriQLrdk Hkkx &6 d iLrj 667 d v/khu dk;Z djrh gq;h iO;k dh Hkkfr oru dk ykHk vftZr djrh jgxh A vkn’k tkjh gksus d mijkUr Jh gjiky flag eV dk orueku de ugh gksxk vkj ugh gh mUgs lsok l fudkyk tk;xkAß

The State of U.P has issued a G.O on 15-10-1997 in respect of regularization of the work charge employees of the department who are working continuously for the last several years. According to the G.O work charge employees who have rendered continuous satisfactory service of 5 years or more than 5 years till 31st March 1997 shall be regularized on the post held by them. The relevant clause of the G.O. is mentioned below:-

Þok;h izHkkfjr dfe;ksa ftudh fujUrj lUrks”ktud lsok;h foHkkx e fnukd 31-3-1997 dk ikp o”kZ ;k bl l vf/kd gks xbZ gks ,o vc rd fujUrj dk;jr gks rFkk tks odsZkp ij fu;qDr dj ifrc/k gr tkjh dkfeZd foHkkx d ‘kklukn’k l[;k 1085@dk&1991 fnukfdr 29-8-1991 d iO;k l fu;qDr gks dk miyC/k fu;fer inksa@fjfDr;ksa LFkkbZ ,o vLFkkbZ

nkuk i:dfr d: in lfEefyr g\ dh lhek rd fu;fer dk;| iHkkfjr

vf/k"Bku e: j[ku gr| ik= ekuk tk;:A bl fu;fer dk;| iHkkfjr de|pkfj;k dk jkT; de|pkfj;k dh Hkkfr lHkh l|fo/kk;: vu|ekU; gkxhAß

The petitioners have pointed that the respondents have passed the order without giving any opportunity to the petitioners of being heard. Once order of regularization was passed in favour of the petitioners, it was necessary that the person who is affected should have been heard before cancelling the same.

According to the petitioners cancellation of the order will amount to civil consequences and as such opportunity of hearing should have been afforded to the petitioners before the impugned orders are passed.

The petitioners have also relied upon the judgment of Apex Court in writ petition (Civil) No. 140 of 1989 Raj Narain Vs. State of U.P. The Apex Court has observed as under:-

"We have carefully perused the proposed scheme in regard to work charged employees and we felt that clause 'D' which talks of regularization as per vacancies arising in regular posts on the establishment, a modification in necessary, it that, there should be a review of the cadre strength from year to year and based on the past requirement and continuity of work charges employees the cadre strength should be increased by a certain percentage of the work charged employees working over a period of time that may be fixed by the Government so that the pace of regularization is accelerated and in not the same as obtaining in the past, For example, if 100 work charged employees have been required throughout a period of time it could reasonably by estimated that even if shedding takes place a certain percentage of those employees would certainly be retained

and a part of them could be absorbed by increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to year, therefore, becomes necessary because while of the one side the financial difficulties of the Stat has to be kept in view, on the side the welfare of the workman who have served the State on different projects has to be balanced. Concern is also to be shown for those who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impression the State Government that if work charged employees have been on the establishment for long period that State should be liberal in the matter of revision of the cadre strength so that the benefit of regularization is available to a reasonably good number of work charged employees who have been associated with State Department for long periods."

The petitioners have also placed reliance on the judgment of Prayag Narain and others vs. State of U.P. and other (1998) 3 UPLBEC 21251. In this case also the petitioners were employed in P.W.D. and were working on the posts of Beldar/Meth. All of them were initially engaged on daily wages and later on engaged on master roll therefore, they had prayed that the respondents be directed to pay equal pay for equal work.

The petitioners have referred the judgment of Apex Court in the case State of Haryana and others vs. Piara Singh and others AIR 1992 SC 2130. It has been held as under:

"So far as the work charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and

as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell- say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job".

The Apex Court has held that on account of cancellation of regularization, the petitioners have suffered civil consequences in the case of State of Orissa Vs. Dr. Binapani Dei and others AIR 1967 SC 1269. The Apex Court has observed that the administrative orders, which involve civil consequences, have to be passed consistently with the rules of natural justice. The observations of the Apex Court are quoted below:-

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority it is true, is not in the position of a Judge called upon to decided an action between contesting parities, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that party to whose prejudice an order is intended to be passed in entitled to a hearing applies alike to

judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

The Apex Court in the case Shrilekha Vidyarthi vs. State of U.P. AIR 1991 SC 537 has held as under:

"It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs vs. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test is every state action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

……. ……..

Every Stage action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by law and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that

'be you ever so high, the laws are above you.' This what men in power must remember, always.

Almost a quarter century back, this Court in S.G. Jaisinghani vs. Union of India (1967) 2 SCR 703, at pp. 718-19 : (AIR 1967 SC 1427 at p. 1434), indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should le made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law (see Dicey "Law of the Constitution" – Tenth Edn. Introduction ex). "Law has reached its finest moments" stated Douglas, J. in United States v. Wunderlick (1951-342 US 98: 96 Law Ed 113), "When it has freed man from the unlimited discretion of some ruler…. where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice, Discretion, as Lord Mansfield stated it in classic terms in the case of John Wikes (1770-98 ER 327) "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful.

In writ petition No. 236 (S/S) 2000, Pooran Singh Vs. State of Uttaranchal and others His Lordship Hon'ble Mr. Justice P.C. Verma has held as under:-

"It is not disputed that the cancellation orders has been passed without any notice or pa in lieu of notice as required in condition no. 2 of the regularization orders contained in annexure no. 1 therefore, cancellation orders have been passed without affording any opportunity of hearing to the petitioners. As the regularization orders were passed in implementation of the Scheme contained in Govt. order dated 15-10-1997 after due selection and the petitioners were regularized against the then existing posts, as such, the reason assigned for cancellation that posts have been reallocated by the Chief Engineer vide order dt. 10-4-2000 is not acceptable.

…….. ……..

On account of cancellation of regularization, the petitioners have suffered civil consequences, therefore, the cancellation orders could not have been passed without affording opportunity of hearing to the petitioners as held by the Apex Court in Basudeo Tewary Vs. Sido Kanhu University and others (1998) 8 SCC 194. In Gajanan L. Parnekar Vs. State of Goa and another (1998) 8SCC, the Apex Court held that recall of order of absorption without giving notice or opportunity of hearing is violative of principles of natural justice."

In Civil Misc. Writ Petition No. 2756 (S/S) of 2001 along with four others writ petitions, His Lordship Hon'ble Mr. Justice P.C. Verma has held as under:-

"On account of cancellation of regularization, the petitioners have suffered civil consequences, therefore, the cancellation orders

could not have been passed without affording opportunity of hearing to the petitioners as held by the Apex Court in Basudeo Tewary Vs. Sido Kanhu University and others (1998) 8 SCC 194. In Gajanan L. Parnekar Vs. State of Goa and another (1998) 8 SCC, the Apex Court held that recall of order of absorption without giving notice or opportunity of hearing is violative of principles of natural justice."

Admittedly, the order of cancellation has been passed without affording any opportunity to the petitioners.

However, if, at all, there is any requirement, liberty is given to the respondents to pass fresh orders in accordance with G.O. dated 15-10-1997, after giving opportunity to the parties.

Consequently, the writ petition is allowed and the orders dated 21-4-2000 passed by the respondent NO. 5 cancelling the regularization of the petitioners are quashed. No order as to costs.

Dated:-15-5-2004 **(Rajesh Tandon, J.)**

M.K